REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed July 31, 2006. In the Office Action, the Examiner notes that claims 1-10 are pending and rejected. By this response, Applicant has amended claims 1-6 and 8-10.

In view of both the amendments presented above and the following discussion, Applicant submits that none of the claims now pending in the application are indefinite, anticipated or obvious under the respective provisions of 35 U.S.C. §§112, 102 and 103. Thus, Applicant believes that all of the claims are now in allowable form.

It is to be understood that Applicant, by amending the claims, does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing the instant response including amendments.

35 U.S.C. §112 Rejection of Claim 1

The Examiner has rejected claim 1 under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner finds the recitation "sending to a television associated with the subscriber" to be unclear.

In response, Applicant herein amends independent claim 1. The Applicant respectfully submits that independent claim 1 now fully satisfies the requirements of 35 U.S.C. § 112. Therefore, the Applicant respectfully requests the rejection be withdrawn.

35 U.S.C. §102 Rejection of Claims 1-4 and 7-10

The Examiner has rejected claims 1-4 and 7-10 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 5,231,494 to Wachob (Wachob '494). Applicant respectfully traverses the rejection.

Applicant's claim 1 recites:

> 1. A method of delivering television programming to a plurality of subscribers using tiered video, the method comprising:
> associating a first video program with a first channel;
> associating a second video program with a second channel;
> receiving from a respective subscriber input device a channel selection chosen by each one of the plurality of subscribers;
> sending a different video program associated with a different channel not selected by the plurality of subscribers to each television associated with the plurality of subscribers, wherein the different video program for each one of the plurality of subscribers are not the same. (Emphasis added.)

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Wachob '494 fails to disclose each and every element of the claimed invention, as arranged in claim 1.

Specifically, Wachob '494 fails to teach or suggest at least sending a different video program associated with a different channel not selected by the plurality of subscribers to each television associated with the plurality of subscribers, wherein the different video program for each one of the plurality of subscribers are not the same, as recited in claim 1.

Wachob '494 discloses that a plurality of signals are multiplexed into a single channel. (See Wachob '494, col. 1, ll. 54-57, col. 2, ll. 15-18, col. 5, ll. 7-30, emphasis added.) When a commercial message break is about to occur, a microcontroller selects a signal to be shown on the currently viewed channel. (See Wachob '494, col. 5, l. 56 – col. 6, l. 6.) Notably, Wachob '494 does not teach or suggest that the commercial is on a different channel, as positively recited by Applicant's independent claim 1.

Moreover, the Applicant's invention teaches that the different video program for each one of the plurality of subscribers are not the same. Consequently, using demographic information, the network controller may target commercials to the correct audience by showing different commercials to subscribers with different demographics even though they are tuned to the same channel. (See Applicant's specification, p. 14, l. 27 – p. 15, l. 4.) In contrast, Wachob '494 teaches that a prioritization algorithm is

used to determine which demographic of viewers to use for determining which commercial message to select. (See Wachob '494, col. 5, l. 56 – col. 6, l. 6.)

Thus, Wachob '494 does not teach or suggest each and every one of the limitations of Applicant's invention as recited in claim 1. As such, Applicant submits that independent claim 1 is not anticipated by Wachob '494 and is patentable under 35 U.S.C. §102. Independent claims 2, 4 and 8 recite relevant limitations similar to those recited in independent claim 1. Accordingly, for at least the same reasons discussed above, independent claims 2, 4 and 8 also are not anticipated by Wachob '494 and are patentable under 35 U.S.C. §102. Furthermore, claims 3, 7 and 9-10 depend directly from independent claims 2, 4 and 8, while adding additional elements. Therefore, these dependent claims also are not anticipated by Wachob '494 and are patentable under 35 U.S.C. §102 for at least the same reasons discussed above in regards to independent claims 1, 2, 4 and 8.

Therefore, Applicant respectfully requests that the Examiner's rejection be withdrawn.

35 U.S.C. §103 Rejection of Claims 5 and 6

The Examiner has rejected claims 5 and 6 under 35 U.S.C. §103(a) as being unpatentable over Wachob '494 in view of U.S. Patent 5,155,591 to Wachob (Wachob '591). Applicant respectfully traverses the rejection.

This ground of rejection applies only to dependent claims, and is predicated on the validity of the rejection under 35 U.S.C. 102 given Wachob '494. Since the rejection under 35 U.S.C. 102 given Wachob '494 has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that the additional reference supplies that which is missing from Wachob '494 to render the independent claims anticipated, this ground of rejection cannot be maintained. Accordingly, claims 5 and 6 are patentable over Wachob '494 and Wachob '591 under 35 U.S.C. §103(a).

Therefore, Applicant respectfully requests that the Examiner's rejection of claims 5 and 6 under U.S.C. §103 be withdrawn.

CONCLUSION

Thus, Applicant submits that none of the claims, presently in the application, are indefinite, anticipated or obvious under the respective provisions of 35 U.S.C. §§112, 102 and 103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 10/30/06

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